

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV2018-02405

BETWEEN

ALFRED I. PIERRE

Claimant

AND

FRANCIS MOREAN

Defendant

Before: Master Alexander

Date of delivery: October 21, 2019

Appearances:

**For the Claimant: Mr Khemraj Harrikissoon SC and Ms Cherry-Ann Pottinger
instructed by Ms Kera Cuffie-Antrobus**

The Defendant not appearing and unrepresented

DECISION

BACKGROUND

1. The claimant is an attorney at law with thirty-eight years practice. The defendant is a blogger who maintains a public Facebook page under the name "Francis Morean", which is accessible to all users of the internet with a Facebook account. Sometime around April 26, 2018, the defendant used his Facebook page to perform acts of defamation against the claimant. The defamation complained about included postings and live-streamed videos

that viciously attacked the character of the claimant as well as threatened his life.

2. On July 06, 2018, the claimant filed suit seeking several reliefs including but not limited to damages for libel and slander, assault and trespass. By said action, the claimant also sought injunctive relief as well as an order that the defendant publishes a summary of the court's judgment in a daily newspaper and on the website containing his Facebook page. The defendant failed to participate in this matter.

3. On January 15, 2019 the claimant obtained judgment against the defendant for:
 - i. Damages for the words, statements and innuendos about the claimant published on the defendant's Facebook page posted in writing and by video and pleaded in the claimant's statement of case at paragraphs 4, 5, 6, 13, 15, 17, 18, 20 and 23;
 - ii. Damages for trespass for the actions of the defendant at the claimant's office on April 28, 2018;
 - iii. An injunction restraining the defendant by himself, his servant, or agents or otherwise, from further publishing or causing to be published in the said manner or any similar manner or any manner, words defamatory of the claimant and in particular, those words, statements and innuendos published on the defendant's Facebook page as stated in 1(a) of the court order;
 - iv. The defendant to publish the terms of the court order as stated in 1(a-b) and 2 above on the defendant's Facebook page forthwith for a period of fourteen days;

- v. Interest on the award of damages at the statutory rate of five per cent (5%) from the date of judgment until full settlement; and
 - vi. Costs to be paid on the prescribed scale.
4. As at the hearing of the assessment on July 17, 2019, there was no compliance with the order of the court by the defendant and it would appear that the defamatory statements continued. The claimant's evidence consisted of two witness statements filed on July 04, 2019, one by Mr Cyril Bernard and the other by the claimant.

EVIDENCE OF DEFAMATION

5. The defamation took the form of both slander and libel so the claimant produced evidence to the court in the form of written statements and videos. On more than one occasion, the defendant live-streamed on Facebook the defamatory attack against the character of the claimant. The claimant averred that the defamatory statements did indescribable and widespread damage to his reputation, both professionally and personally. He stated that as a family man, he was held in high regard, occupying a central and respectable position in that circle. He has fathered nine children, most of whom were professionals, and all major family matters would be placed before him for his scrutiny, opinion and guidance. The defamatory statements affected him, by causing a measure of trimming of his role as a family man. He gave evidence also that he was a businessman of wide respectability and success, conducting his business in various communities in Trinidad and Tobago. The claimant stated that as a businessman, he had amassed major landholdings over the years, as well as the famed "Legacy Hall" building in Arima. Legacy Hall was a landmark in the Borough of Arima, and served as a special events venue with a capacity to seat five hundred persons. From his evidence, it was clear that

Legacy Hall was not only a business of considerable prominence in the Borough of Arima, but was known nationwide. Further, his reputation as its owner was prized, and something that he guarded. He averred specifically to his respectable circumstances as an attorney of thirty-eight years standing at the bar. He claimed that he possessed a rather pristine record as a practicing attorney of some vintage. He was the Head of Chambers at Equity Law Chambers at 29A Edward Street, Port of Spain. He stated that he has never ran afoul of the professional code of conduct established under the Legal Profession Act nor given the Disciplinary Committee cause to have any disquiet over his practice.

6. The evidence pointed to the claimant being a man of some sterling accomplishments whose contributions to society were widespread. Apart from his private practice, he was a member of a State Board and legal advisor to the Arima Borough Corporation during the NAR Administration, a political party whose emergence into political office was on a wave of widespread popularity. He was also the legal advisor to the Second Division Police Association from 1981 – 1999. He has been the managing director of NAMSSA-PIERRE Ltd, his family company, since its registration, and the now dissolved JC's Real Estate Agency. He was the president of the St George's College Parents Teachers Students Association from 1989 – 1992 and a member of the Holy Cross College Board of Management for two periods viz from 1989 – 1995 and 2001 – 2011. From 1970 – 1980, he was a police officer with the Trinidad and Tobago Police Service. He worked also as a teacher/lecturer at a private school in Sangre Grande in 1969 and, later, as a lecturer at the Cipriani Labour College then as a tutor at the Hugh Wooding Law School.

7. The claimant averred that his first interaction with the defendant came about when one Dr Ruby Atwell Ferguson retained him to distrain for arrears of rent upon the defendant. Consequent on this, the defendant was evicted from the premises. Subsequently, the defendant retained the claimant's services in 2010 and some other times. However, the source of conflict that gave rise to the present matter could be traced to sometime in or about August, 2017, when the defendant approached him about a land transaction. The defendant wanted to buy land but the title was defective and the vendor was unable to pay the legal fees to rectify it. It was agreed that the defendant would bear the cost of a vesting order application to rectify the title, which would later be taken out of the purchase price. The vesting order was obtained on March 27, 2018 but conflict arose when the defendant claimed he had paid the claimant all fees and disbursements, but could not produce his receipts. The defendant then took to Facebook, where through a series of postings and live-streamed videos containing innuendos, he began to defame the claimant. It was the evidence of the claimant that the defamation commenced around April 26, 2018 and was continuing while the matter remained in court. The Facebook postings and live-streamed videos also contained threats of physical violence against the claimant.

8. Based on the evidence before this court, the defamatory statements, as published on the defendant's public Facebook profile, were numerous. They comprised of both written statements and live videos on Facebook. Further, the Facebook publications evinced a clear understanding by the defendant of the likely impact of his defamation and a wanton disregard for same. The defamatory attacks took both forms as follows:

Written Facebook postings (Friday April 27, 2018)

Some of those lawyers feel they can still behave like long time badjohn police. He has a bigger fight on his hand than he expect. My greatest concern is that he may try to pull a gun on me. Other than that, by the time I am finished with him on Social Media there may be no need to even take him before the Disciplinary Committee.

He is by and large clueless about the contemporary power of technology and social media so I expect him to get on in his brawling manner and I would be set like a jep for him.

Live Facebook videos (Saturday April 28, 2018 at 7:30 am)

I just don't want to call the name of the lawyer just yet ...

A problem is brewing between myself and an attorney in Arima who is behaving like quite a bully, a very unscrupulous, unethical, unreasonable manner apparently he has a track record of behaving this way of trying to bully people being very abusive to his employees and so on and so on.

It can even get to blows this morning because I am going to his office in a short while because he is very aggressive and I don't intend to take any nonsense from him ...

The way he treat his employees they are afraid to put proper information on the receipts even when they write receipts.

I am doing a little dossier on the conduct of this gentleman because apparently there are somethings he has been doing that are not very kosher ...

He is an ex-policeman. He is trained in arms and ammunition. He is a property owner. He has a large number of properties around Arima and other places maybe. Someone of his rank, experience and contact not

impossible that he has a licence to carry firearm and he may have a gun in his office and then he may pull a gun on me because he is a bully ...

9. On the said April 28, 2018 there were numerous defamatory postings and live videos published on Facebook. The defendant proceeded to the claimant's office around 10:15am accompanied by others, where he broadcast a live stream on Facebook of his encounter with the claimant. Then the defendant posted the video on his Facebook page, where he invited his online friends to "share it". The following defamatory statements were made by the defendant while being live-streamed on Facebook:

Don't play the ass with me, don't play the ass with me, not this time Alfred Pierre ...

You are not getting away this time, not this time Mr Pierre you are a nasty man.

You are putting your practice in jeopardy. Not everybody you can play the fool with and get away, not this time not this rounds Mr Alfred Pierre.

I send my assistant to you, you behave like a badjohn, you flared up, you throw the letter in she face.

You not getting away this time.

If you don't bully your staff you would have a better staff.

You are a nasty man but you would not get your hand on that property I can assure you.

He is a nasty man. He is trying to rob me of a property.

10. These defamatory postings and live videos included references to the claimant as: "a bully", "a badjohn", "a nasty man" and "the Legalape". The Legalape label was taken as a reference to the claimant's behaviour as being uncivilized

and unprofessional. The defendant also labelled the claimant as “unscrupulous”, “unethical”, “violent” and as one who was abusive to his employees and possessing of an “evil soul”. The claimant was accused also of having a history of engaging in illegal activities, including robbing his clients of their properties and assaulting the defendant and his assistant. He was labelled an ex-policeman with “a terrible attitude” and possibly in conspiracy with police officers at the Arima Police station.

11. Two other videos were live-streamed and published on the same day, from the Arima Medical Facility. By these publications, the claimant was accused of a history of doing “public mischief”, abusing his role as an attorney by poor representation of his clients and of having “*a very despicable character*”.
12. The defamation continued on April 29, 2018 where the defendant issued a public invitation via his Facebook page for persons with legitimate grievances against the claimant or who had suffered injustice from him to come forward in order that “*the action of this evil man be exposed.*” In the defendant’s publication on Facebook on that day, he attacked the claimant’s practice as an attorney. He described the claimant as an attorney who was “unethical”, “aggressive”, “belligerent” and of carrying on a “highly questionable” legal practice. The defendant alleged further that the claimant had sought and convened a “private meeting” with the person who was selling the land, supposedly for unethical purposes. In the same online publication, the defendant also cast negative aspersions on how the claimant was conducting his business as the owner of a real estate company. To this end, he implied that the claimant might not have acquired his “loads of properties around Arima” in an ethical manner. The defendant also stated that he was in the process of preparing a dossier on the claimant to expose him.

13. Following the service on the defendant of a pre-action protocol letter on May 02, 2018, the defendant intensified his defamatory attack of the claimant on his Facebook page. In statements made on May 13, 2018 on Facebook, the defendant, after referencing how poisonous plants were used during slavery as instruments of liberation, openly and/or by innuendo threatened the life of the claimant. To this end, the defendant published the following:

And after the conduct of Alfred Pierre 2 weeks ago, there have been times when I have felt so disgusted by his entire behaviour and so tired of his role in other current situations in my life that I have begun to think that I can sharpen my machete and deal him a single blow that would bring to an end all of this stress. This may seem to be a very strange thing to say in an open forum like Facebook. It is however the sad reality of how pressured, annoyed and disgusted I have felt by his behaviour.

... he has actually been attending church recently ... He sits in the same pew almost every time he attends. When he visits the marketplace, his paths are predictable.

If anyone wishes to murder him or to inflict any form of violence upon him, he is a sitting target. Of course I am not inviting anyone to do so although I would be very frank and up front in saying that if someone were to murder him I would most likely breathe a sigh of relief in the manner that I did when I heard of the murder of Dr Ravi Maharaj in San Fernando.

The point that I am trying to make is that I am familiar with many of his movements. His residence is just a few minutes' walk from mine. I have

*actually been to his home when he was in need of certain healing herbs.
Essentially, he is a sitting duck, if I were a violent-minded man.*

14. Subsequently, the defendant also on May 16, 2018 at 4:12pm posted two caricatures, which the claimant alleged were directed at him since they followed his pre-action letter. By these caricatures, the defendant allegedly mocked the claimant for filing suit for damage done to his “good reputation”:

*WHAT WOULD THAT BE YOUR REPUTATION AS A DISGRACED CHAUVINISTIC
DEMAGOGUE WHO CAN'T CONTROL HIS SEXUAL URGES AND WHO THINKS A
SHOWER PREVENTS AIDS?*

EVIDENCE OF LOSS AND DAMAGE SUFFERED

15. By order dated January 15, 2019, Harris J held that the words and/or postings and/or videos have defamed the character of the claimant. Evidence of this included *inter alia* the labelling of the claimant as “dishonest”, “a cheat”, “a criminal”, “a violent person”, “a woman abuser”, “a Legalape”, “unethical” and of being “belligerent” and assaulting clients. These libellous statements inflicted injury to his personal and professional character, particularly his practice as an attorney. There was evidence that the claimant was accused of stealing land or illegally acquiring properties, with the implication of this being from clients. In evidence was that he was called an unfit attorney, which aimed to severely damage his reputation and legal career. By stating that the claimant was someone that the defendant would either kill or welcome someone killing, the defendant exposed the claimant to violence and brought him into public ridicule, hatred and contempt.

16. Consequent on the defamation, the claimant stated that the injury done to his family life, social circles and career was seen in the numerous telephone calls and enquiries he received from his siblings, children, friends and colleagues, particularly from the USA, England and around the world. Their questions took various forms, spanning the range of enquiry to accusations but all were based on a belief in the truth of the defendant's postings. These questions and/or assertions from family, friends and colleagues were about what was happening, or soliciting an explanation for why the claimant had stolen the defendant's land, or of what illness he was suffering or which of his brothers was charged for murder or if he was now into foolishness. The questions were based on allegations on the defendant's Facebook page and were posed to him by telephone, and in the public streets. He attested that colleagues raised eyebrows when he approached, many turned away or avoided direct eye contact with him, others slighted him, a few whispered jokes and made gestures while some expressed shock and amazement to him. He averred that it caused him immense embarrassment to have to face these questions, witness avoidance of colleagues or defend himself to family and friends. He saw a drastic slide in his personal and professional reputation, which he had built and maintained over the years and that the Facebook postings were continuously replaying themselves in his mind. He was under great distress and pressure in his family life, and saw a rise in tension in that circle. His family became obsessed with monitoring the defendant's postings. He now avoided attending family outings, social functions and public appearances, as he feared for his safety.

17. The defamation also affected his health and caused him emotional distress. There were changes to his personality, as he found himself snapping at almost everything. It affected his health as he witnessed the effect on his family

members who were distressed and embarrassed by the libellous statements. He averred that his family faced questions from friends and peers and had to alter their lifestyles in the face of the unchecked threats by the defendant against the claimant. He gave evidence that he had suffered stress from the first publication to date as the postings have continued unabated. They invaded his sleep, caused him to jump out intermittently from napping and forced him constantly to be making security checks for any likely invasion. These security checks have been occurring both during the daytime and nighttime. The claimant was consumed by the threats contained in the unending postings, as the defendant kept repeating that, "Gladiator was murdered" even after he got judgment and that one Dr Maharaj was killed after he had opposed the defendant. The effect on the claimant's physical and psychological health was seen also in that he became disoriented, depressed, and suffered a loss of appetite. He also developed an uneasy state of mind and dropped forty pounds since the defamation onslaught.

18. He stated that the Legacy Hall business dropped considerably, from a once thriving business. Bookings were down from an average of three monthly, to one or none per month almost immediately since mid-May 2018. It led the claimant to rent out the premises later in 2018. The claimant also witnessed a decrease in his professional income as his clientele dropped considerably. It forced him to reduce his operational costs significantly. He gave up the internet at his Arima office, ceased to employ its secretary and opened that office on Monday and Saturday mornings 9:00am – 12:00 noon, only to existing clients. In addition, he had to pay a high cost for security to secure his protection against any likely fallout from the defamatory statements. He was experiencing a financial bleeding out in his professional life and threats to his personal safety.

DISCUSSION OF THE LAW

19. Defamation occurs where there is an attack on a person's good reputation without any lawful justification or excuse. It occurs when words or materials are published to a third party tending to lower a man in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit. Defamatory material published in a written or more permanent form is called libel. Libel is actionable *per se* so that no evidence of damage is required to get compensation. However, to receive a substantial award of damages, evidence of injury or loss must be adduced¹. There is no need to prove reputation or actual damage or loss was suffered to get nominal damages.²
20. Damages in defamation are awarded for compensatory and vindictory purposes. The claimant obtains compensation for distress and hurt feelings and for any actual injury to reputation, which has been proved or which may reasonably be inferred. Damages also serve as an outward and visible sign of vindication³. Usually, an assessing court would consider this threefold purpose in the context of certain factors - the gravity of the allegation; the scale of publication; the extent to which the readers believed the words to be true; any impact on the claimant's feelings, reputation or career and any aggravating or mitigating factors.⁴

¹ *Hayward v Hayward* [1897] 1 ChD 905

² *Halsbury's Laws of England* 4th Edition Vol 28 at para.18.

³ *John v MGN* [1997] QB 586

⁴ *Cleese v Clarke* [2004] E.M.L.R. 37 at para 38

(a) EXTENT OF PUBLICATION

21. The law makes clear that an assessing court must consider of prime relevance the extent of the defamatory publication. This was reiterated in this jurisdiction thus:

141. The extent of the publication is also very relevant. A libel published to millions has a greater potential to cause damage than a libel published to a handful of people.

142. The significance of an award of damages is much greater in a case where the Defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the Defendant acknowledges the falsity of what was Page 43 of 51 published and publicly expresses regret that the libellous material was published⁵.

22. The present defamation was done on Facebook, on the defendant's public profile through various postings and live-streamed videos. To these were added public invitations to friends and subscribers to the defendant's Facebook page, as well as their friends, to share the live feeds and postings on the World Wide Web. Defamation via Facebook has an unmatched global reach so the injury caused was not capable of exact quantification. This court considered that a widely publicized slander or libel was likely to cause substantial damage unlike one published to a handful of people.⁶ It accepted that once a defendant chose an online platform to defame another, the extent of the defamation would be widespread, unseen and its footprints permanent. It meant that the potential for continuing harm was limitless and virtually

⁵ *Seebalack Singh v The Trinidad Express Newspaper Limited and Others* CV2013-04366 delivered on May 12, 2016 by Seepersad J

⁶ *TNT News Center v John Rahael* Civ App No 166 of 2006

unstoppable. In the present matter, the defendant gave free and open access to his defamatory publications to users of Facebook across the Caribbean region and worldwide so the scale of the publication was broad. Further, the defendant knew and intended that his publications would be republished and that such republication was the natural and probable consequence of using Facebook. There was judicial notice taken of the fact that with the existence of Google and internet search engines, Facebook posts and videos streamed on the internet would be easily accessible to countless online viral users. The spread of a Facebook defamation was like a disease of pandemic reach and impact, for which there was no cure. Neither the defamer, the defamed nor the court could control, halt or erase its spread, especially when dealing with an unapologetic and determined defendant as was the present case.

(b) GRAVITY OF THE ALLEGATION

23. Gravity would cover injury to the personal integrity, professional reputation, honour, courage, loyalty and the core attributes of the claimant's personality. The more derogatory and cutting the defamation, the more serious of an injury would be done to the claimant. The instant defamation was offensive, directly attacking and bringing into disrepute the professional and personal character of the claimant. The claimant was accused of using his profession to swindle his clients out of their properties and monies, and then of inflicting violence upon them. The defamation operated as a "professional hit" on the claimant's private legal practice, forcing the claimant to decrease its level of operation and reduce staff. It was made worse when members of the public were incited to share their grievances and join in on "taking the claimant down" by exposing him as a fraudster and trickster. This claimant would have experienced injury to his reputation and bruised feelings as the defamation was clearly serious. The damage to the claimant was aggravated further by

the defendant's publication that he was amassing "a dossier" of the claimant. The inference here was that the allegations were truthful, of a criminal nature and so of such seriousness to warrant the compiling of a dossier of evidence. This indication that the defendant was compiling evidence against the claimant would have done grave injury to the claimant's professional reputation and led clients and potential clients to believe in the truth of the defamation. This court considered the gravity of defamation and its scale of publication and that it would have closely touched the claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, so it was serious⁷. This court considered further that the slander and libellous words about the claimant were considerably weighty, hurtful and demeaning. These words directly attacked the claimant's personal integrity, alleged deficiencies in character, his legal profession and other businesses. These would no doubt have been a source of distress, humiliation and battered feelings. The evidence was accepted, therefore, that there was a negative influence of these remarks on his reputation and his business locally.

24. On the other hand, the claimant brought no documentary evidence nor made any claim to having an international business reputation that suffered financial or other ruin because of the defamation. He averred only that the defamation resulted in enquiries from individuals and colleagues residing in England and the USA. There was no evidence as to how that translated into actual financial losses to his business or if he had international business ties that suffered. Nevertheless, notice was taken of the potential for defamation on Facebook to be extensive and that in the present case, it was grave and cutting so that

⁷ *TNT News Center Ltd v John Rahael* (supra)

any international business ties would likely have been affected. In terms of potential injury to the claimant overseas, it was accepted that, at the lowest level, his personal reputation and relationships would have been hurt abroad. Further, given the nature of the defamation, this court felt it reasonable to assume that he could have suffered some damage to his professional reputation overseas but as his evidence was silent thereto, it refused to conclude thereon.

25. Having thoroughly examined the evidence, this court found sufficient evidence of a major, purposeful blotting of the claimant's character and reputation, requiring compensation under the law. The claimant led evidence of threats to his life, which included the defendant openly stating that other litigants such as the well-known announcer Gladiator "was killed after he got judgment". There was evidence that spoke to a whittling down of the operation of the claimant's businesses, drop in revenue earned and impact on his children and family life in general. The defamation involved clear allegations that the claimant was dishonest, corrupt, lacking professional ethics and imputed thievery, incompetence and a lack of fitness to practice as an attorney. As a businessman, he was maligned as untrustworthy. It attacked him on a personal level as possessing a mal-formed personality of a "bully" and "badjohn". In the modern virtual world, there is a high level of negativity and irreverence attached to these concepts, with many militating against such persons as societal misfits deserving of condemnation. Thus, labelling him a bully and badjohn invited widespread viral attacks against his reputation. Imputed also was that he was deserving of being killed, like others who had suffered such a fate. The present defamation was serious, debasing and injurious, and the platform of Facebook used for its dissemination afforded a

global spread. This court concluded that the evidence was sufficient to ground a substantial award.

26. The claimant had built up a professional and personal reputation of which he prided himself through his interactions with clients. This evidence was unchallenged. As a rule, *“where the injury to the claimant’s reputation is negligible, the evidence in relation to the claimant’s injured feelings assumes prominence in the assessment exercise.”*⁸ This court accepted that there was sufficient evidence of injury to reputation in the instant case. The claimant was a public figure and prominent businessman in his community with name recognition, who suffered major disruptions to his businesses. Personally, the evidence pointed to the continuous embarrassment, stress and anxiety caused by the libellous posts and live-streamed slander. The online defamation started in April, 2018 and spanned in excess of one year and, as at the assessment, was continuing despite an injunctive court order. It forced him to live in fear for his life. In oral evidence, he admitted to having to wear a bulletproof vest and reduce family contact, as he feared for the safety of his children and grandchildren.

(c) OTHER CONSIDERATIONS

27. Usually, general and special damages in defamation cases are compensatory in nature⁹. In addition to these, a defamation claimant may be entitled, in certain circumstances, to punitive damages, awarded with a view to penalizing the defendant.¹⁰ In the present case, this court considered if the conduct of the claimant contributed to the situation so as to affect the damages. It found

⁸ *TnT News Centre Ltd v John Raphael* (Supra)

⁹ *McCarey v Associated Newspapers Limited* [1965] 2 QB 86, pgs 104-105 per Pearson LJ

¹⁰ Damages: The Law of Damages (Common Law Series) LexisNexis 2nd edition, May, 2010

no evidence of bad conduct by the claimant as the defendant had refused to defend this matter and, in fact, chose to carry on with the defamation in the face of a court order. Indeed, there was no evidence that the claimant was of a bad reputation or of the existence of any justification for the actions of the defendant. The defamation seemed to be without justification, apology or offer of amends. Instead, the defendant seemed bent on publicly attacking the character and reputation of the claimant, while live streaming on the World Wide Web. This defamation was done with clear malice and with the full knowledge and intention to do maximum damage to the claimant's reputation.

CASES

28. The claimant sought \$900,000.00 as general, \$450,000.00 as aggravated and \$100,000.00 as exemplary damages. The cases considered included:

- ***Nizam Mohammed v The Trinidad Express Newspaper Limited and Ors***¹¹ where a claimant/attorney at law, of thirty seven years call to the bar, sued for defamation published in an article that said he was referred to the Disciplinary Committee and found guilty and an order made against him. In that case, an apology was published the following day. The court held that the defamation was "a most serious libel" that was highly defamatory and injurious to the claimant's professional reputation and awarded \$325,000.00 as general damages inclusive of aggravated damages.
- ***Lasana Liburn v Gordon Pierre***¹² where in a series of defamatory statements on Facebook, there was extensive tagging of prominent personalities and friends to ensure maximum public access. The claimant, a prominent sports

¹¹ *Nizam Mohammed v The Trinidad Express Newspaper Limited, Omatie Lyder and Ria Taitt* CV2011-00264 delivered on July 19, 2013 by Gobin J

¹² *Lasana Liburn v Gordon Pierre* CV2016-02398 delivered on May 07, 2019 by Alexander M

personality, was defamed as an “undercover buller”, “paedophile” and wife beater, which affected his business and personal reputation and the court awarded \$450,000.00 as general damages inclusive of aggravated.

- **Anand Ramlogan v Jack Austin Warner**¹³ where at a public meeting defamatory statements were made alleging corruption and thievery by the claimant, an attorney of twenty five years call, a senior counsel and then Attorney General of Trinidad and Tobago. The court awarded \$600,000.00 inclusive of aggravated damages and \$200,000.00 in exemplary damages.
- **Andrew Gabriel v Phillip Edward Alexander**¹⁴ where for several defamatory publications, some on Facebook, the court awarded \$525,000.00 as general damages and \$250,000.00 as aggravated damages. The court used the continuing defamatory publications after the claim was filed as relevant a factor to assess the defendant’s state of mind and general conduct to make its finding of malice.

29. Having examined the evidence, the cases and relevant principles on assessment, this court found the defamation in the present case to be graver, more injurious and done with full and stated intention of destroying the claimant’s reputation. Following **Gabriel**, the continuing publications after the claim was filed were considered as relevant to this court’s conclusion of malice. Moreover, the malicious intent of the defendant was expressed in his statement that when he was finished with the claimant, there would be no need to take him to the Disciplinary Committee. By live streaming his defamation on Facebook, stating that he was compiling a dossier, inviting the public with grievances against the claimant to join him on his mission of destruction, the defendant was imputing that there was truth to his claim and

¹³ *Ramlogan v Jack Warner* CV2014-00134 delivered on July 30, 2015 by Mohammed J

¹⁴ *Gabriel v Phillip Edward Alexander* CV2017-00507 delivered on May 01, 2019 by Gobin J

evidence existed out there to corroborate his claim. The defendant was aiming to incinerate the professional reputation of the claimant via the online platform of Facebook, knowing that its reach was borderless and permanent. He then invited vigilante justice on the life of the claimant, even going so far as to post that Gladiator was murdered after he had obtained judgment. He acted with contempt of the court, by continuing his defamation in the face of injunctive relief and has neither issued any apology to date nor complied with the order of the court. Generally, an unreasonable lack of an apology can be evidence of malice for which aggravated damages would apply¹⁵. The defendant's actions showed that malice and ill will motivated his libel. It also demonstrated recklessness, as to whether the claimant or his reputation would survive the defamation. In all the circumstances of this case, it was felt reasonable to award \$800,000.00 as general damages plus \$100,000.00 as aggravation. For the trespass, the claimant sought \$35,000.00 for general and exemplary damages. On the evidence, it was felt reasonable to award \$20,000.00 as damages for the trespass to his person.

EXEMPLARY DAMAGES

30. The claim for exemplary damages advanced was applicable on the evidence provided. The claimant brought evidence of the publications being tortious and reckless as to whether or not they were true. The attacks were continuous despite judicial intervention, and by his refusal to defend, it was inferred that the defendant benefitted from the reckless promulgation and feeding of the defamation. Indeed, it was assumed that the defendant, as a blogger, might have calculated that he would have profited¹⁶ in increased viewership through his live streaming of the encounter with the claimant at his office and then

¹⁵ [McGregor on Damages](#) 17th Edition page 1439, para 39-044

¹⁶ [McGregor on Damages](#) 16th Edition

subsequently at the hospital. **McGregor on Damages** stated that, “*Indeed in Brown v. Cassell, Lord Wilberforce said that defamation was ‘normally thought of as par excellence the tort when punitive damages may be claimed’. In practice, awards are likely to be made only where the Defendant has calculated that he would profit from the defamation thereby bringing Lord Devlin’s second common law category into play.*”¹⁷ The present defamation showed a clinical disregard for the injury brought to bear upon the claimant, and that the defendant wanted “to sell another man’s reputation for profit”. That the defendant acted in hope of material gain could be inferred from the fact that he was a prolific blogger whose expressed motivation was to ruin the claimant via social media. Inferred also was that the defendant intended to gain increased listenership, viewership and popularity at the claimant’s expense. In the context of this matter, the claimant was awarded \$100,000.00 as exemplary damages.

ORDER

31. It is ordered that the defendant do pay to the claimant -
- i. General damages for defamation of \$900,000.00 inclusive of aggravation and \$20,000.00 for trespass with interest at the rate of 2.5% per annum from October 03, 2018 to October 21, 2019;
 - ii. Exemplary damages of \$100,000.00;
 - iii. Costs of the assessment in the sum of \$66,724.50;
 - iv. Stay of execution of forty-eight days.

Martha Alexander

Master

¹⁷ McGregor on Damages 16th Edition para 1928